IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONs No.17363 & 17264 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAYA GUJARAT KAMDAR UNION

Versus

MECRURY ANTIBIOTICS PVT. LTD.

Appearance:

1. Special Civil Application No. 17363 of 2003

MR SUBRAMANIAM IYER for Petitioner No. 1

NANAVATI ASSOCIATES for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 15/04/2004

ORAL JUDGEMENT

Rule. Mr.Kunal Nanavati, learned Counsel appearing for the respondent, waives service of notice of

rule. With the consent of the parties, the matters are taken up for final hearing.

2. Since both the matters are inter-connected and common questions are involved in both the matters, they are dealt with simultaneously.

3. The short facts of the case are that the petitioner Union filed the Recovery Application for recovery of the amount which was not paid as per the minimum wages prescribed for the work. The matter proceeded ex-parte and on 20-7-2002, the Labour Court passed the order for recovery of the amount with the cost of Rs.500/-. The applications were submitted for restoration and for setting aside of the ex-parte order passed by the Labour Court, by the respondent herein (in SCA No.17363/2003) namely Uday Contractor and Gayatri Enterises being Misc. Application No.72/2002, and Aditya Enterprise preferred application being Misc. Application No.71/2002. The Labour Court ultimately passed the order on 18-9-2002, whereby the order was set aside on condition to pay the amount of Rs.750/-towards cost to each workman as a pre-condition for restoration. The respondent herein and other applicants of the application for restoration did not pay the amount of Rs.750/- to each workman as ordered and, therefore, the Labour Court once again passed the order on 4-3-2003, whereby it recorded that since the amount of Rs.750/- is not paid, the earlier order which was passed ex-parte on 20-7-2002 shall operate. On 20-3-2003, the Labour Court issued the recovery certificate to the Revenue Officers which ultimately came to be forwarded to the District Development Officer for recovery and since no actions for recovery of the amount were taken, the petitioners herein have preferred SCA No.9278/2003 and SCA No.9257/2003. After the issuance of the notice by this Court in the said two petitions being SCA No.9278/2003 and No.9257/2003, respondent herein preferred once again Misc. Application before the Labour Court for setting aside the order dated 4-3-2003, whereby the earlier ex-parte order was confirmed. The Labour Court considered the matter and ultimately passed the order for setting aside of the ex-parte order, whereby the condition is modified of imposing the cost of Rs.500/per workman which results into modifying the earlier order for imposing of cost of Rs.750/- per workman as per the order dated 4-3-2003 and under the circumstances the petitioner Union has approached this Court.

4. Upon hearing Mr.Iyer, learned Counsel for the petitioner and Mr.Nanavati, learned Counsel for the

respondent, it appears that there is no dispute on the point that the order dated 4-3-2003 passed by the Labour Court earlier for setting aside of the ex-parte order is not challenged by any party to the proceedings before the higher forum and the said order has become final. However, the only contention is raised on behalf of the respondent that subsequently the order is modified by the Labour Court as per the impugned order. It appears that once the discretion is exercised by the Labour Court for setting aside the ex-parte order on condition to pay the cost of Rs.750/- per workman, as such the Labour Court had no jurisdiction to modify the said aspects. The Court at the most could consider the matter for setting aside of the ex-parte order only if the earlier order dated 4-3-2003 is fully complied with. Not only that, but there is ex facie default on the part of the respondent herein and the other parties to the proceedings of the order dated 4-3-2003 in not paying the amount of Rs.750/= per workman and, therefore, the party who has committed default should not be allowed to get the premium of its own wrong. Even if it is considered that the Labour Court had the discretion to set aside the ex-parte order, then also the Labour Court ought to have imposed a reasonable cost in the subsequent proceedings of which have been disposed of by the impugned order. It appears that the order dated 21-11-2003 which is impugned in this petition is not challenged by the respondent and under the circumstances the only aspect which is required to be considered is that the Labour Court could not have reviewed its own order, in any case, for ordering payment of Rs.750/- per workman as cost and the Labour Court considering the facts and circumstances ought to have awarded a reasonable cost of the proceedings of Misc. Application which has been disposed of by the impugned order.

5. Considering the facts and circumstances, I find that on account of the default committed by the respondent and other parties to the proceedings of Misc. Application which has been disposed of as per order dated 4-3-2003 and as a consequence thereof the petitioner Union is dragged into the litigation of facing the subsequent Misc. Applications and also the proceedings before this Court of these petitions, the cost of Rs.5,000/- deserves to be the reasonable cost for compensating the default caused by the respondent.

6. In view of the above, the order dated 21-11-2003 passed by the Labour Court for setting aside the ex-parte order in recovery applications No.189 to 213 of 2001 (which is the subject matter of SCA No.17364/2003) and

recovery applications No.167/2001 to 188/2001 (which is the subject matter of SCA No.17363/2003) is modified to the extent that the ex-parte order passed by the Labour Court earlier in the aforesaid recovery applications shall stand set aside on condition that the respondent herein pays the cost of Rs.750/= to each workman as per the order dated 4-3-2003 and additionally pays an amount of Rs.5,000/- as the cost of the litigations in each petition (Spl.C.A) after the order dated 4-3-2003.

7. The aforesaid amount shall be paid by the respondent to the petitioner Union and the concerned workman within a period of one month from today. The petitions are allowed to the aforesaid extent. Rule is made absolute accordingly.

15-4-2004 (Jayant Patel, J.)

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